IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30 - 6 -2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA

AND

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.5134 of 2002

The Director of Rural Development,
Panagal Maaligai,
Chennai-15. .. Petitioner

vs.

1. A.Periyanayagam

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, calling for the records pertaining to the order made in O.A.No.6727 of 1995 dated 23.4.2001 on the file of the Tamil Nadu Administrative Tribunal, the second respondent herein and to quash the same.

For petitioner : Mr.E.Sampathkumar, Govt. Advocate
For respondents: Mr.V.Suthakar for R-1

ORDER

R.SUDHAKAR,J.

The Director of Rural Development, aggrieved by the order of the Tribunal in O.A.No.6727 of 1995, dated 23.4.2001, has filed the present writ petition.

2. First respondent herein is the contesting respondent. The case of first respondent is as follows:

First respondent, the applicant before the Tribunal, who was working as a Rural Welfare Officer Grade-II in the Thandarampet Panchayat Union, North Arcot Ambedkar District, (Vellore District), was charged with the offence of accepting a total sum of Rs.130/- on three occasions between July 1984 and December 1984 from one P.Ramakrishnan of Changam Taluk, promising him to get a loan from the Co-operative Society for purchasing a sheep unit. A charge memo was issued and enquiry was conducted by the Tribunal for disciplinary proceedings and on the basis of the enquiry report, it was found that the charges levelled against the first respondent/applicant are proved and the first respondent was awarded punishment of reduction of time scale of pay to a minimum period of five years by proceedings dated 9.9.1995 and this order was challenged by the first respondent before the Tribunal.

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3. The second respondent-Tribunal, by the impugned order, came to the conclusion that some evidence was available for the charge. However, it held that the order was passed in violation of principles of natural justice, and therefore, quashed the same. The Tribunal, while considering the case of the first respondent/applicant, held as follows:

> "10. On the point of violation of principles of natural justice, it is clear that the respondent while issuing the show cause notice accompanied with the report of the Enquiry Officer, has come to the conclusion to award the punishment to the applicant. The applicant should have supplied with the Enquiry Officer's report before the respondent comes to the conclusion of awarding punishment. As this has not been done, the judgment referred to above by the applicant's counsel is squarely applicable to this case. Therefore, the principle of natural justice has been violated."

Further, the Tribunal also considered the claim of the first respondent that there was no evidence to hold him guilty, as P.W.5, a labourer who had given evidence after six to seven years and was not able to tell the name of the accused officer to whom he had paid the amount and the purpose for which the amount has been paid.

4. On the first issue, the Tribunal relied on the judgment of the Supreme Court reported in AIR 1994 SC 1074 (Managing Director, ECIL vs. B.Karunakar) and in particular to paragraph 7 at page 1091 of that judgment, which reads as follows:

> "Hence, it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

Therefore, only on the ground of violation of principles of natural justice, the order of punishment was quashed. The Tribunal, while considering the fact that the punishment of stoppage of increment had already been implemented, held that there was no need to pay the amount already recovered. The Tribunal however directed that the first respondent will be entitled to service benefits, promotion etc. and further went on to hold that if the punishment had not been implemented, the first respondent would be entitled for pay fixation prospectively. Aggrieved by this order of the Tribunal, the Department is before this Court.

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5. The main contention of the petitioner-Department is that consequent on the 42nd amendment to the Constitution of India (that there is no need for the issue of a second time court notice to the Accused Officer in respect of the particular penalty to be imposed) and in the light of the decision of the Supreme Court of India reported in AIR 1994 SC 1074 (cited supra), the Government in G.O.Ms.No.148, Personnel and Administrative Reforms (N) Department, dated 15.3.1996 have amended the Rule 10(b) of Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, deleting the provision for issue of show cause notice to the accused-officer mentioning the particular penalty to be imposed. The abovesaid amendment came into force only on 15th March, 1996. It is further contended by the petitioner that as per the existing procedure in vogue (vide Rule 10(b) of the said TNCS (DPT) Rules) at the time of passing final order on 9.9.1995, the Head of the Department, i.e. the Director of Rural Development came to a provisional conclusion to reduce the time scale of pay to the minimum for a period of five years on the respondent as a measure of punishment for the proved charges and issued show cause notice on 16.12.1994 to the respondent with a copy of the report of the Tribunal for disciplinary proceedings calling for his further representation within 15 days from the date of receipt of the show cause notice. After receipt of further representation dated 7.4.1995 from the individual and after taking into account the representation, the Director of Rural Development passed final orders on 9.9.1995 awarding punishment on the individual. It is therefore contended that the Government had come to a provisional conclusion with regard to the penalty to be imposed and consequently the delinquent was supplied with a copy of the report of the enquiry-Tribunal and was called upon to show cause within a reasonable time against the penalty proposed to be inflicted. The Department therefore contended that there was no need for issuance of second show cause notice and therefore, there was no violation of principles of natural justice as alleged. The amendment to the G.O. was made pursuant to the decision of the Supreme Court referred to above and therefore, it was contended that on the proved charges, the order of the disciplinary authority imposing punishment is well within it's powers and therefore, the order of the Tribunal requires to be set aside.

6. It is stated in the show cause notice dated 16.12.1994 as follows:

> "The Director of Rural Development, Madras <u>after careful and independent examination of the Report of the Tribunal,</u> for Disciplinary Proceedings, Madras accept the findings of the Tribunal and has come to the provisional conclusion, to reduce the time-scale of pay to the minimum for a period of FIVE YEARS on Thiru.A.Perianayagam, formerly Rural Welfare Officer Grade II, Thandrampet Panchayat Union, now as a measure of punishment for the above proved charge." (emphasis supplied)

7. The contention of the first respondent is that before the show cause notice dated 16.12.1994 is issued, the disciplinary authority has already come to the conclusion that the findings of the Tribunal for disciplinary proceedings, are liable to be accepted and also comes to the provisional conclusion to reduce the time scale of pay to minimum period

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of five years on the ground that it is a measure of punishment for the above proved charge. The contention of the counsel for the first respondent is that the copy of the report of the Tribunal for disciplinary proceedings, should have been furnished earlier and an opportunity should have been given to the first respondent to submit his statement of defence. On the contrary, by the show cause notice proceedings, the authority has already come to the conclusion that the charges are proved and the findings of the Tribunal for disciplinary proceedings, have been accepted. Therefore, the show cause notice proceedings is only an empty formality and that the petitioner-Department has pre-judged the issue and came to the conclusion about the guilt of the first respondent. According to the counsel for the first respondent, non-furnishing of the enquiry report before issuance of the show cause notice is fatal to the disciplinary proceedings and the conclusion arrived at by the authority in the show cause notice clearly shows that they have already pre-judged the issue and therefore, it is contrary to the G.O. and also to that of the ruling of the Apex Court referred to above.

8. We have given our anxious consideration to the contentions of the parties on merits.

9. We find that the show cause notice dated 16.12.1994 has been issued by the petitioner herein, who has simply accepted the findings of the enquiry-Tribunal that the charges are proved and the punishment has to be given. It is therefore apparent that the authority has not applied his mind independently to the various charges alleged against the first respondent. However, the same has been accepted without any appreciation of material evidence and the order of punishment has been recommended by the disciplinary authority following the report of the enquiry officer.

10. We find that the enquiring authority in this case is the Tribunal which has given it's enquiry report. The delinquent employee did not receive the copy of the enquiring authority's report before the disciplinary authority arrived at the conclusion with regard to the guilt or innocence of the employee on the charges levelled against him. Therefore, the right of the employee to defend his case before the disciplinary authority, is taken away as the issue has been pre-judged. This will amount to denial of a reasonable opportunity for the delinquent to prove his innocence and it will be breach of principles of natural justice.

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11. In this case, before issuing show cause notice dated 16.12.1994 whereunder the disciplinary authority has already come to the conclusion that the findings of the Tribunal for disciplinary proceedings are accepted on proved charges, there was no opportunity for the first respondent to rebut the charges. We have no hesitation to hold that the petitioner-Department has pre-judged the issue. It is no doubt true that second show cause notice is not contemplated after the 42nd amendment to the Constitution. The question of issuing second show cause notice does not arise. In this case, the disciplinary authority has come to a conclusion about the guilt of the first respondent even at the time of issuance of the show cause notice dated 16.12.1994 and along with the said show cause notice, the copy of the enquiry report has been submitted. So, there is a clear case of prejudice on account of violation of principles

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of natural justice. It is also a case of arbitrariness on the part of the authority. We have no hesitation to hold that there is violation of the principles laid down in the judgment of the Apex Court referred to above.

12. Therefore, we have no hesitation to accept the contention of the first respondent that the disciplinary authority has pre-judged the issue even at the stage of issuance of show cause notice and at that point of time only, the enquiry report of the Tribunal for disciplinary proceedings, was furnished. Therefore, there is miscarriage of justice on account of violation of principles of natural justice and consequently, the disciplinary proceedings are to be set aside.

13. In the facts and circumstances of the case, we find no reason to interfere with the order of the Tribunal which has modified the order of punishment to the effect that if the punishment has not been implemented, the first respondent would be entitled for pay fixation prospectively. The writ petition is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

cs

To
1. The Director of Rural Development,
Panagal Maaligai,
Chennai-15.

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai.

+ 1 CC to the Government Pleader SR NO 28183

+ 1 CC To Mr. V.Sudhakar, Advocate SR NO.28302

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